BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

BARBARA MINEAR Claimant	
VS.) Docket No. 192,299
DAIRY QUEEN BRAZIER Respondent	}
AND	
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY Insurance Carrier	

<u>ORDER</u>

The respondent and insurance carrier requested review of the Preliminary Hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on April 14, 1995.

ISSUES

The Administrative Law Judge granted claimant's request for benefits. The respondent and insurance carrier requested this review and raised the following issues:

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent.
- (2) Whether claimant provided timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds as follows:

This proceeding should be remanded to the Administrative Law Judge for the taking of evidence regarding the issue of timely notice of accident. Under K.S.A. 44-520 the claimant must provide notice of accident to the respondent within ten (10) days of the incident or establish just cause which extends the period for giving notice to seventy-five (75) days.

(1) The Appeals Board agrees with the Administrative Law Judge that claimant has sustained personal injury by accident arising out of and in the course of employment with

respondent. The Appeals Board finds it is more probably true than not that claimant scraped her ankle on a box while at work that resulted in an ulceration on her left leg.

(2) The Appeals Board must reverse the finding of the Administrative Law Judge regarding timely notice. The respondent and insurance carrier are correct that the record fails to contain evidence that notice of accident was given to an owner, supervisor, or anyone else who held a managerial position with respondent. However, because notice was not made an issue by the respondent and insurance carrier until after the conclusion of the testimony, the proceeding should be remanded for the taking of additional evidence on that issue. In deciding to remand this case to the Administrative Law Judge, the Appeals Board is relying upon the representations of respondent's counsel that notice is a legitimate issue. Implicit in that representation is the suggestion that Mrs. Pat Liles is not a co-owner of respondent and that she did not inform her husband of her conversations with claimant about possibly needing medical treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on April 14, 1995, should be, and hereby is, set aside; and that this proceeding should be, and hereby is, remanded to the Administrative Law Judge for the taking of evidence regarding timely notice of accident.

Dated this day of J	uly, 1995.
	BOARD MEMBER
	BOARD MEMBER
	ROARD MEMBER

c: David Jackson, Wichita, Kansas P. Kelly Donley, Wichita, Kansas Nelsonna Potts Barnes, Administrative Law Judge David A. Shufelt, Acting Director

IT IS SO ORDERED.